1942. **File No.** O Munis Dist- 42

Legal **DEPARTMENT**

A · **BRANCH**

8M 195

Subject:— Opinions under the Bombay Dist- Municipal Act- 1901

P.41 K

File No. O. Munis Dist 142

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M.R.D.
4-5-56
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15/5

Submitted.

The facts are as follow:-

The triennial period of the Rashimatpur Municipality was likely to expire on 31.10.41. The new elections were held on 12.10.41 and as required by section 20 of the Bombay District Municipal Act, 1901 the names of the councillors were notified in the B.G.G. dated 13-11-41. The reitring President of the Municipality called a special meeting o n 14.11.41. for the election of the President and Vice-President and Messrs. Mane And Kashid were elected as President and Vice-president respectively.

2. Under section 23(8)of the Bombay District Municiapl Act,1901 when a Minicipality is newly constituted , the meeting for election of a new president and Vice-president is to be called by the Collr.or such other officer as the Collr. may authorise in this behalf. In pursuance of this provison, the Collr, in his order dated 20.11.41 authorised the Mamlatdar of Koregaon to call the meeting of the newly elected Board or the election of President and Vice-President. The Mamlatdar, however, reported on 22.11.41. that the election of the President and Vice-President was already held by the retiring President on 14.11.41. It is evident that the election of the President and Vice-president at the meeting convened by the retiring President is in violation of the provisions of sub-sections(8)(9),(11) and (12)of section 23, consiquently electon of both the President and Vice-president appears to be ultra vires the interviews.

PP. 18-19 ante.

3. The D.S, G.D. holds that the election of the President and Vice-president is unlawful and can be set aside only by a court of law. Until therefore, the election is set aside, the Collr, cannot exercise his power under section 23(8),for if he does so, there will be two presidents and Vice-presidents functioning simultaneously, the Collor. having no authority to suspend under section 174the illegal resolution by which the present president and Vice-presidents are elected.

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4. As pointed out in R.L.A.'s opinion No. 7224,dated 16-8-41, the election of the President is a statutory duty and an act complete in itself. It is not an order or resolution of a Municipality the execution of which is unlawful under section 174(1) of the Bombay District Municipal Act, 1901. Moreover. as pointed out by R.L.A, it is not possible to suspend an order or resolution which has already been completely executed(vide R.L.A.'S No.10735,dated 12.12.41) Under

Under section 23(8), the meeting should be called within twenty-five days from ~~the date on which the names of the~~ the date on which the names of the councillors of the new Municipality are published in the B.G.G. It is reported that the names ~~the~~ newly elected councillors were published under section 20 on 13.11.41. If so, the meeting should have been called not later than 8.12.41. As the statutory period for calling the meeting under section 23(8) has expired, it does not appear P.3 ante that a meeting under that section can now be called by the Collr. ~~He~~ power vests in the Collr. or the Govt. ~~He power to~~ set aside the election. The election of the of, the President and Vice-president being void, will be a nullity, and consequently, it will not be necessary for the Collr. to formally set it aside. He can simply declare that the election of the President and Vice-president as illegal, and then leave it open to any person to challenge it in the Civil Court. Consequently, the best course is to let the status quo ante prevail until the election is challenged in a Civil Court. The view of the D.S.G.D. appears to be correct.

Sd/-
19-12

A.S. I think another view is possible in the present case.

It appears that the triennial period of the Rahimatpur Municipality was to expire on 31.10.1941. The new elections were held on 12.10.1941. and the names of the councillors were notified in the B.G.G. dated 13.11.1941. The retiring President of the Municipality called a special meeting on 14-11-1941 at which Messrs. Mane and Kashid were elected as President and Vice-president respectively. The Collr. has passed an order under section 174(1) of the Bombay District Municipal Act, ~~1901~~ 1901 suspending the resolutions of the Municipality in respect of the election of the President and Vice-president as illegal. The Collr. has confirmed the same. The question for consideration of the R.L.A. is what order should be passed by Govt. in the present case.

2. A corporation can only do corporate acts at at corporate meeting unless a special method is authorised by constituion. To be duly constituted a a corporate meeting must be convened by proper authority and must be held upon notice which gives every member of corporation entitled to attend an opportunity unless it is held on the charter day (see Halsbury's Laws of England, Vol. VIII para. 897 PP 51,52). Under section 23(8) of the Bombay District Municipal Act, the duty to call a meeting for the election of a new president and vice-president is imposed upon the Collr. The special general meeting at which Messrs. Mane and Kashid were elected president and vice-president respectively was not therefore validly constituted, since it had been called by the retiring president who

retiring-president-who had no power to do so Consequently the election of Messrs. Mane and Kashid at such meeting is not a corp a corporate act and is ultra vires. The general principle is that where an order is entirely ultra vires, to order is a mere nullity an no suit is necessary to set it aside.(see Balvant vs.Sof S.I.L.R. 29 Bom.489 ;R.L.A.'s opinion No.9247,dated 18.9.1939). It is true that

M.R.D.
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Office of the R.L.A.

Since the invalid election of the president and Vice-President held at the meeting unlawfully convened by the retiring president has now been regularised by a fresh election held at the instance of the Collector under the Provisions of section 23(3) of the Bombay District Municipal Act, 1901, and the very persons who were previously elected as President and Vice-President have been re-elected and are now actually functioning as such, the order of the Collector Collecto suspending the resolution of the Municipality relating to the previous election has served its purpose and it is no longer necessary to consider the legality or otherwise of the Collector's order. In the circumstances Government need take no further action in the matter. (G.R.L.A.'s opinions Nos. 477-P dated the 11th August 1926; 2/-Confl., dated the 23rd January 1937 and 7752 dated the 30th August 1940).

Sd- P.M.H.
31-1-42

Remembrancer of Legal Affairs.

M.R.D.
3-5-36

U.R. to G.D. No. 917, dated 31-1-1942.

Submitted.

The Commissioner, N.D. has been informed that the deduction of 10 per cent. from the amount of refund of the terminal tax made by the Ankleshwar Municipality after 1-4-1937 will amount to imposition of a new terminal tax on goods in transit and is therefore not legal. The Comsr. N.D. states that a Municipality incurs some administrative expenses in dealing with the goods in transit on which refunds have to be given on ex ort within a certain time and that such refunds give the Municipality a great deal of trouble without profit. Further, the fact that the local area is useful as a transit route is a benefit to the transporter of goods . Consequetly, the Commissioner considers that it would not be unlawful to prescribe by by-laws under section 48(u) of the Bombay District Municipal Act. 1901, for the levy of a fixed fee to cover administrative charges on applications for refunds of terminal tax, since the fee would not be on goods but on the applications for refunds of terminal tax for the purpose of enabling the Municipality to recover the cost of the service it in granting in granting refunds. The question for the R.L.A.(consideration is whether by-laws under section 48(u)of the B.m. District Municipal Act, 1901, can legally be made prescribing levy of a fixed fee on every application for granting regund of the terminal tax.

2. The expression "terminal tax" as defined in rule 2(b)of the Ankleshwar Municipality Terminal Tax Rules and By-laws,1915, means octroi levied on the import into the Municipal limits of Ankleshwar of goods specified in the Terminal Tax Schedule, such octroi not being ordinarily liable to be refunded on the export of goods from the said limits. According to this definition,terminal tax is in the native of octroi. However, octroi as such levied a under section 59(iv)of the Bombay Dist .Municipal Act, 1901, on animal or goods or both brought within the octrii limits for consumption of use therein, while terminal tax would be leviable under clause(xi)of section 59 on goods or animals imported into municipal limits which are not actually consumed or used therein but are merely in transit.

P. 17-40 of G.D.file S.-91(21)

3. It is true that the Commissioner does not propose any deduction to be made from the amount to be refunded, but proposes levy of some fee on every application made for refund of the terminal tax .

section 48(i) (j) of the Act. But the general provision in clause(u)of secton 48(1) cannot be held to provide for matters which are not specifically mentoned so far as clause (j) is concerned. It cannot be held to be a residual provision of the nature referred to by Reilly J.in I.L.R. 53 Mad. 722.(Cf.para.2 of R.L.A.'s opinion No 820 dt.14-2-31). It does not appear that in the absence of a specific provision in the Act, It is legally feasible for the Municipality to frame a by -law under clause (u) of section 48(1)to charge fee on applications for refnd.

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Sd/-
16-1

R.L.A.'s Office.

The question for consideration of the R.L.A. is whether it would be competent to the Ankleshwar Municipality to frame a by-law under section 48(2) (u)of the Bombay District Municipal Act, 1901, providing for payment of a fee on an application for refund of the terminal tax.

2. It is a principle universally declared and admitted that municipal corporations can levy no taxes general or special, upon the inhabitants or their property unless the power be plainly and ~~unmistakably~~ unmistakably conferred. The authority must be given either in expressxwords or by necessary or unmistakable implication(see Aiyangar's Law of Municipal Corporations in British India, P.271). "tax"as defined in section 3 (14)of the Bombay District Municipal Act, 1901,includes any fee leviable under this Act. There is no provison in the Act empowering expressly or by necessary implication the Municipality to levy a fee on applications for refund of the terminal tax. Consequently no fee can be levied on such applications either by any rule or-by-law made under the Act.

2. A by-law as Lord Russel C.J. said in Kruse v.Johnson(1898,2 Q.B. 91at P.96) is "an ordinance..... imposed by some authority elected clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. Section 48(1)of the Bombay District Municipal Act provides for powers of the Municipality to make by-laws for matter specified in clauses(a)to (u)and to prescribe a fine not exceeding five hundred rupees for the infringement of any such by-law. A breach of a by-law providing for payment of a fee on an application for refund of the terminal tax cannot be penalised by the imposition of a fine. Moreover the general and residual provision contained in section 48(1)(u) cannot be resorted to for making a by-law regulating the refund of the terminal tax when a special provision for the same is contained in section 48(1) (j). The corporation has no power in a case where the corporation has a duty to pay and the other party has a right to claim a refund, to promulgate any by-law enforceable by a penalty compelling such party to do any particular thing in order to get the refnd (cf.53 Mad. 722). It would not therefore be legally feasible for the Ankleshwar Municipality to make a by-law under section 48(1)(u) requiring the exporter to pay a fee on an application for the refund of the terminal tax. ~~The view taken by D.S.(~~

~~view taken by S~~ The view taken by S. (G.D.) at page 3 ante is correct.

Sd/- P.N.M.
10-2

Remembrancer of Legal Affairs.

U.R. to G.D.,No,1261 dated the 11th February 1942.

M.R.D.
3-5-56

Office of the R.L.A.

The rule of construction known as the ejusdem generis rule is that where there are genral words following particular and specific words, the general words must be confined to things of the same kind as those specifis (See Craies on Statute Law, 4th Edition, pages 165-66). The expression "is unlawful" following the words "is causing or is likely to cause injury or annoyance to the public, or to lead to a breach of peace" in section 174(1) of the Bombay District Municipal Act, 1901, is not of the same nature and consequently the rule of ejusdem generis can have no application. It woul not therefore be correct to say that an unlawful resolution must be of the nature of causing or likely to cause injury or annoyance to the public or leading to a breach of the peace before it can be suspended under section 87(1). The view expressed onthis point in paragraph 3 of the G.D. office note at page 7 ante does not appear to be correct.

2. Under proviso(a)to section 59(1)of the Bombay District Municipal Act, 1909,no tax other than a special sanitary cess of a water-rate shall, without the express consent of the Provincial Government, be leviable in respect of any building or part of any building belonging to His Majesty and used solely for public purposes, and not used or intended to be used for purproposes of profit. It is clear that Arse-Mahal vests in His Majes Majesty and is used as a district Bungalow. Provision of residences for Government officials has been held to be a public purposes(Petitw. Secretary of State, I.L.R. 39 Bom.P.279). A priori the provision of practicall rent-free accommodation for the touring officers isma public purpose(vide R.L.A.'s opinion No.1322, dated 11th April 1927). The fact that non-officials are allowed to use the bungalow on payment of rent at Rs.2/-per day does not make any difference for the rent realised is norminal and no profits are derived from the bungalow. District Dak Bungalows are not used or intended to be used for prupooses of profit and the income realised does not cover the expenses of its upkeep(videR.L.A.'s opinions Nos. B-200, dated 29th December 1901and O.Munis, Cities-8, dated 23rd March 1928). In view of these opinions, Arse-Mahal would appear to be legally exempt from payment of the house-tax and the Municipality cannot levy the house-tax without the express consent of the Provincial Government. But this view of the case would not be a sufficient justification for the Collector to suspend the Municipal resolution as unlawful. Whether the

Whether the Arse-Mahal is used or intended to be used for the purpose of profit is largely a question of fact and in the absence of a judicial decision on the point it cannot justifiably be held that the Municipal resolution sanctioning the levy of a house-tax is unlawful. The more appropriate course for Government in the present case would be to rescind the order of the Collector passed under section 174(1) of the Bombay District Municipal Act and to appeal to the Magistrate under section 86 when a notice of demand is issued under section 82(3).

Sd-/ P.N.M.
31-1

Remembrancer of Legal Affairs.

U.R. to G.D.No,945 ,dated the 2nd February 1942.

M.R.D.
3-5-56

Submitted.

In the notice dated 22nd Nov. 1941 given by the pleader for and on behalf of the Mahemadabad Municipality to the Executive Engineer, Kaira and Panch Mahals it is alleged that certain wagon-loads of cement were imported at Mahamdabad station for the period between April and October 1941 in the name of Ex.Engineer and that ascertificates were produced before thec Municipality to the effect that goodsx belong belonged to Government they were exempted from payment of terminal tax. It is contended that through the goods in question were ordered out in the name of the P.W.D. they really belonged to the contractors Messrs. S.B.Joshi and Co. The Municipality consequetly asks for payment of Re 476-7-0 being the amount of terminal-tax which was leviable on the goods imported. The Ex.Engineer Kaira and Panch Mahals in his letter dated 29-11-41 has already informed the Municipality that in view of of the facts stated it cannot levy the terminal tax on the goods imported. The P.W.D. has now forwarded the papers to the R.L.A. for his advice whether the stand taken by the Ex.Engineer is correct or whether any special certificate signed by the Ex.Engineer should be sent to the Municipality to reject the claim made by it.

2. Rule 3 of the Terminal Tax Rules provides that subject to the exemptions and the provisions hereinafter expressly specified, a tax on on all goods of the descripton mentioned in Sehedule A shall on import thereof be payable to the Municipality at the rates specified for such goods. Rule 4 provides for exampton from the siad tax of goods and articles mentoned in clauses(a)to(f). Clause(a) provides for exampton of all imports belonging to orx ordered by on behalf of the Public Authority, provided that they are certified as such by a responsible officer in the form prescribed. Public authority means interalia Govt.(vide rule 2(f) In the notice given by the Municipality it is admitted that "certificates were produced before our clients to the effect that the goods in question belongedto Govt."and in prusuance of such a certificate, the goodswere exempted from payment of the terminal tax under rule 4(a). There is no provision in the rules authorising the Municipality to claim the tax in respect of goodsx which have been already imported and which were exempt from payment of tax on the date of import. The tax is to be levied on "import"

"import" that is at the time the goods are conveyed into terminal tax limits from any other local area and not after the goods are imported. The Municipality is not concerned with the subsequent use made of goods. It has to ascertain whether at the date of import the goods did or did not belong to Government or were or were not ~~order~~ ordered by Government. In the present case, the Municipality admits that goods were imported by the P.W.D. and in fact belonged to Government. Consequetly it was exempt from payment of terminal tax

M.R.D.
3-5-56

Office of the R.L.A.

It is admitted in the notice on behalf of the Municipality that certificates in the form prescribed under rule 4(a) of the Terminal Tax Rules of the Mehmadabad Town Municipality were duly produced. That being so, no further acton would be necessary and and the suit, if filled, would be defensible. The stand taken by the Executive Engineer in his letter at P.No 19 ante is correct and no further or special certificatesx need now be sent to the Municipality.

Sd/-P.N.M.
25-2

Remembrancer of Legal Affairs.

M.R.D.
3-5-66
40

U.R. to the F.W.D.,No.1894 dated the 4th March 1942.

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether a Municip. will be able to exercise effectively the powers for eliciting information about dangerous diseases in pursuance of powers conferred upon it under section 144 of the the Bombay District Municipal Act even if no by-laws in that behalf have been framed by it under clause(h)of sub-section (1)of section 43 of the Act.

2. If powers are conferred upon a Municipality either by Government or the Commissioner, as the case may be, under section 144(2)(a)to direct that every medical practitioner., manager of a fectory or educational institution or every head of a household shall give informaton about a person suffering from a dangerous disease, the Municipality will be competent to exercise the powers so conferred subject to such limitations, restrictions and conditions, if any, as may have been prescribed in that behalf in the order. Under clause(h)of section 43(1) a Municiaplity may make by-laws for enforcing the supply of informaton as to any casses of dangerous diseas and carrying out the provisions of the sections 144and 145. The fact that there is provision for by-laws to enforce the provisions of section 144 does not mean that the Municipality must frame by-laws in order to enforce those provisions. Section 144 general provides for a Municipality to give directions by special or general orders. There is nothing in the section to suggest that these orders must be by-laws. The In order to exercise the powers conferred under section 144(1),the Municipality must pass orders of some kind. These may take the form of by-laws but not necessarily. Whether the orders take the form of by-laws or not, the Municipality may enforce obedience to them by the infliction of the penalties prescribed. Section 144(4)and secton 43(1) provide for penalites. For the exercise of powers conferred under secton 144(1), it is not necessary that the Municipality should frame by-laws. It would be a matter in their discretion. The question whether the exercise of the powers without the framing of by-laws would be effective is not a matter on which legal Department can usefully express an opinion. There is no legal objection to such an exercise.

Sd/-P.N.M.
25-5

Remembrancer of Legal Affairs.

U.R. to G.D.No212 confl dated the 26th May 1942.

M.R.D.
3-5-56
C.4

Office of the R.L.A.

The question for the R.L.A.'s consideration is whether the expendi ture incurred by a Municipality for opening cheap grain shops for the benefit of the residents of the Municipal area is in respect of a measu likely to promote the public convenience within the meaning of section 56(1) of the Bombay District Municipal Act, 1901.

2. A corporation cannot apply the municipal fund for any purposes other than those specified by statue and may be restrained by injunctio if it attempts to misapply the said fund (Newcastle on Tyne Corporation Vs. Attorney General , 1899, A.C.563; Tyne-mouth Corporation vs. Attorn General, 1899, A.C. 293). Unless expressly provided for by statute, a municipal corporation cannot spend its money for carrying on a trading business(See Attorney General Vs.Manchester Corporation,1906, 1Ch 643). Neither the Bombay District Municipal Act, 1901., nor the Bombay Munici pal Boroughs Act, 1925 contains any express provision empowering the municipality to spend funds for carrying on a trading business. But under section 56(1)of the Bombay District Municipal Act, 1901, munici- palities may at their discretion provide for any other measure not specified in section 54 likely to promote the public safety, health, convenience or education. It appears that cheap grain shops convenien or education. It appears that cheap grain shops are to be opend by some municipalites not as a trading business with a view to profit but as a measure likely to promote public convenience in these abnor abnormal days of irregular food supplies and soaring prices. Conse- quently there appears no legal objection to a municipality incurring expenditure under section 56(1)of the Bombay District Municipal Act or Section 71(r) of the Bombay Municipal Boroughs Act, as the case may b for opening cheap grain shops

Sd/-P.B.M.
8-6

Remembrancer of Legal Affairs.

U.R. to G.D., No 4727 ,dated the 9th June 1942.

M.R.D.
3-5-56
C.4

Submitted.

It appears that as there were vacancies due to failure to elect the full number of councillors of the Rander Municipality the Commissioner ,N.D. in pursuance of the provisions of section 10(2) of the Bombay District Municipal Act, 1901, appointed Mr .Maganlal Virchand Shah and three others as Councillors of the said Municipality on 2nd May 1942. On 25th May 1942, the date of first meeting of the new Board, Mr.Shah tendered resignation of his office to the President under section 15 A of the Bombay District Municipal Act, 1901. The The Collector of Surat States that as the Rander Municipality is con consituted of elected members only, and as the Councillors nominated under section19(2) are ~~dee~~deemed to have been duly elected, the vacancy caused by the resignation of Mr.Shah should be filled up by holding a by-election. The Commissioner, N.D.however, holds that if the resignation is of a person appointed under section 10(2), the vacancy should be filled up by a fresh appointment and not by holdin a by-election. The U.S.G.D. doubts the correctness of the view of the Commr.N.D. and holds that the persons nominated by the Commissio er under section 10(2)may be deemd to be members of the Municipality as if they had been elected. Thex first ground urged is that the wo words "failure to elect"mean that there has been an attempt to elect but it has failed, and applying this principle, the vacancy caused by the the resignation of Mr. Shah is that of an elected and not of a nominated councillor. The second ground urged is that section 10(1)(b) of the Act has been deleted. On these grounds it is held that the vacancy of Mr Shah be filled up by a by-election.

2. On the above facts, the question for the R.L.A.'s consideratio is whether under section 18 of the Bom.District Municipal Act 1901 t vacancy caused by the resignation of Mr. Shah, a member nominated undersection 10(2) of the Act, can be filled up by holding a by-election or by appointment of another member.

3. Under section 17(2)(a) of the Bombay District Municipal Act th term of the Newx Board of a Municipality commences on the date of the first general meeting held after the general election and after the expiry of the outgoing councillors. In the present case, as the the first meeting of the newly constituted Rander Municipal

Nander Municipality was held on 25.5.42 its term commenced with effect from that date under section 17(2)(a)of the Act. The resignation was therefore tendered by Mr.Shah on 25th May 1942 after having occupied the office as a Councillor. Consequently the resignation tendered by Mr.Shah was a valid resignation under section 15A of the Act.

4. Under section 18 of the Bombay District Municipal Act, 1901, in the event of death, resignation, disqualification, disability or removal of a councillor previous to the expiry of his terms of office, the vacancy shall be filled up by the election or appointment, as the case may be of a person thereto, who shall hold office so long only as the councillor in whose place he is elected or appointed would have held it if the vacancy had not occurred. As in the present case Mr. Shah was nominated by the Commissioner, N.D.under section 10(2)of the Act and not an elected member, under section 18 the vacancy will have to be filled up by the appointment of another person thereto. The argument advanced by U.S.G.D. that the members nominated under section 10(2) may be deemed to be members"as if they had been elected" is not correct. Had the Legislature intended that "the persons soonominated shall be deemed to have been duly elected" specific provision would have been made to that effect in section 10(2) on the lines of section 6(3) of the Bombay Village Panchayats Act,1933, Nothing is to be added to or to be taken from a Stature, unless there are simplar ground to justify the inference that the Legislature intended something which it omitted to express. "It is a strong thing to read into an Act of Parliament Words which are not there, and, in the absence of clear necessity, it is a wrong thing to do. We are not entitled to read words into an Act of Parliament unless clear reasons for it is found within the four corners of the Act itself"(PP.12&13 of Maxwell on Interpretation of Statutes). Consequently it would be wrong to read words into section section 10(2) of the Act, as suggested by the U.S.G.D., which are not there. The view of the U.S.G.D. does not appear to be correct.

Sd/-
25-7

Although the point do not quite free from doubt, it would appear one a reasonable interpretation of the words "by the election or appoin ment, as the case may be" in section 18 of the bombay District Municipa Act, 1901 that a vacancy is to be filled up by election or nomination according as the Councillor whose seat has become vacant was an elected or nominated Councillor. In the present case Mr. Maganlal who has resigned his seat was a nominated Councillor under section 10(2) . Consequently the vacancy caused by his resignation will have to be filled up by nomination. The view taken by the Commissioner in his endorsement at page 1 ante appears to be correct.

Sd/- P.[illegible].M .
5-8

Remembrancer of Legal Affairs.

M.R.D.
3-5-56
C.4

U.R. to G.D.M.[illegible].6371, dated the 6th August 1962.

Submitted.

It appears that the Managing Committee of Sirsi Municipality by its resolution No. 427, dated the 19thx Feb. 1940(not on record C

PP. 1-2 ante

appointed Dr. Kollali and Bhat and two other private practitioners to do antiplague inoculations and also fixed the scale of remuneration at Rs.2/- for 25 or less number of inoculations or if the number exceeded 25at Rs10/- for every 100 inoculations. Drs.Kollali and Bhat were not the councillors of the Sirsi Muny at the date of the said resolution. They, however, became councillors of the Muny with effect from 25th Nov. 1940 and even after becoming councillors they carried on with inoculation works as before and accepted the fees for the same.

2. It is stated that both the Doctors Kollali andBhat performed inoculations for 7 days and 10da s respectively after they became councillors. Dr. Kollali was the chairman of the Managing Committee from 10th July 1941 to 3rd Dec. 1941. A councidated bill of fees for the inoculations performed by all the Doctors(Kollali, Bhat and Karoor) was passed by the Managing Committee on 6th August 1941 and it

Vide P.19 ante.

appears that Dr. Kollali was one of the five members who provided at and for the bill. It appears that Dr. Kollali received Rs. 17-8-0

Vide do.

while Dr. Bhat received Rs.49--1-6 for inoculation work done by them after their becoming councillors.

Vide PP. 138&19 do.

3. The question for the R.L.A.(s consideration are

(1) Whether Messrs. Kollali and Bhat are disqualified from continuing as councillors under Section 15(2)(a) read with Section 15 (1)(f) of the Bombay District Municipal Act. 1901; and

(2)Whether Dr. Kollali is also disqualified under Section 15(2) (b)(i) of the Act.

4. As regards the first question, Section 15(2)(a) of the Bombay Districts Municipal Act, 1901, provides that if any councillors during the term for which he has been elected becomes disqualified t under sub-section (1), he shall subject to the provisions of sub-section (3), be disabled from continuing to be a councillor and his office shall become vacant. Under Section 15(1)(f) no person may be a councillor who save as provided in clauses (i) to (vii) of the proviso, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a Municipality, or

ere mɔ:ʃɔnbɛlɛnnɔ ɓ).A.L.Ɲ ere ŋgɛ ʋɔn mɔ:ʃɔnbɔ ny ʋɔn ɔ.C

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or in any contract or employment with or under, or by, or on behalf of a Municipality. The word "interest" was the subject matter of consideration in the case of Harirao Vs. the Municipal Corporation of Bombay.(.I.L.R. 47 B .P.809 at 820-21) Wherein Mulla J. after reviewing the English Authorities on the point, held that "where there is a pecuiary advantage or a reasonable expectation of a pecuiary advantage. it must be regarded as an "interest" within the meaning of that section". If the interest is pecuiarth, it is immaterial that the amount involved is trifling (Hall V. Longbottom (1894) 1 Q.B. 767). In deciding whether "interest" pecuniary or material is disqualifying, the Courts have applied there the test of conflict between interest and duty. They have held that the object of the provisions "obviously was to prevent the conflict between interest and duty that might otherwise inevitably arise."(Dutton V. Wilson(1906) 2 K.B.292).

FP. 91-96 of 0- Local Boards/35.

(see also R.L.A.(B opinion No. 268.dated the 25th January 1935). It is clear that both Messrs. Kollali and Bhat have received remuneration from the Municipality for the inoculation work done by them after their becoming councillors. It was because there was a reasonable expectation of a pecuniary advantage for the services rendered that they were prepared to undertake that work. As the interest in this case is pecuniary. it is immaterial that the amount involved is trifling. Clause(v) of the proviso to sec.15(1) appears to have been deliberately inserted because otherwise legal practitioners engaged on behalf of the Muny would have come within the mischief of clause(f) of sec.15(1). In the absence of a similar provision exempting a person engaged on behalf of a Muny as a medical practitioner, the case of Messrs.Kollali and Bhat ould fall within the mischief of sec. 15(1)(f) and consequently uder section 15(2)(a) they would be disabled from countinuing to be councillors of the Sirsi Muny.

Vide P.19 ante

5. As regards the second question, it is clear that as chairman of the Managing Committee Dr. Kollali voted for the bill in respect of the matter in which he was personally interested. As Dr. Kollali presided at the meeting of the Managing Committee and voted as a Chairman, he acted as a councillor in a matter in which he had a direct interest and and he was disqualified under Sec. 15(2)(b)(i) of

of the Act (vide R.L.A.'s opinion No. O-Munis. Cities-23, dated the the 20th Dec. 1928) para 5.

PP.265-266 of O.Munis Cities/28 .

Sd/-
20/3

It appears that the facts of this case are peculiar and although the question is not quite free from doubt it sums possible to hold on these facts that no disqualification has in fact been incurred by the councillors Kollali and Bhat.

Section 15(2)(a) of the Bombay District Municipal Act, 1901 provides that if any councillor during the term for which he has been elected or appointed becomes disqualified under sub-section(1)he shall subject to the provisions of sub-section(3)be disabled from continuing to be a councillor and his office shall become vacant. Under clause(f) of sub-section(1) no person may be a councillor who save as the-reinafter provided, has directly or indirectly by himself or his partner any share or interest in any work done by order of a municipality, or in in any contract or employment with or under or by or on behalf of, a municipality. Provisions of this nature exist in all municipal Acts.(see section 16(1)(b)of the City of Bombay Municipal Act, 1888, section 12(2)(b) of the Bombay Municipal Boroughs Act, 1925;and section 9(1)(e) of the Bombay Local Boards Act, 1923). These provisions are based on section 12 of the English Municipal Corporation Act, 1882 (45 and 46 Vict,C.50). The word "interest" which occurs in Indian

M.R.D. 4-5-56 C/4

Office of the R.L.A.

It appears that the facts of this case are peculair and although the question is not quite free from doubt it seems possible to hold on these facts that no disqual- ification has in fact been incurred by the councillors Kollali and Bhat.

2. Section 15(2)(a) of the Bombay District Municipal Act, 1901 provides that if any councillor during the terms for which sub-section(1) he shall subject to the provisin of sub-section(3) be disabled from continuing to be a councillor and his office shall become vacant. Under caluse(f)of sub-section(1) no no person may be a councillor who save as there under provided, has directly or indirectly by himself or his partner any share or interest in any work done by order of a municipality, or in any contract or employment with or under or by or on behalf of, a municipality. Provisionsof this nature exist in all municipal Acts (see section 16(1) (f) of the City of Bombay Municipal Act, 1888,section 12(2) of the Bombay Municipal Boroughs Act, 1925; and section 9(1)(d) of the Bombay Local Boards Actl 1923). These provisions are based on section 12 of the English Municipal Corporation Act, 1882(45and 46Vict. C.50). The word "interest" which occurs in Indian and English Acts has been the subject matter of consideration by the courts. In Narman vs. Municipal Corporation of Bombay (47 Bom.809 at P 821)Mulla J. After reviewing the English authorities on the point held that the word "interes as used in the above provisions means either pecuniary interest or where the interest is not pecuniary, it must be at least a material interest. If the interest is pecuniary, it is immaterial that amount involved is trifling (Nell vs.Longbottom, 1894,1 Q.B.767). In deciding whether the interest pecuniary or material is disqualifying, the Court have applied the test of conflict between interest and duty. They have held that the object of the provisions "obvisouly" was to prevent the conflict between interest and duty that might inevitably arise"(Nutton v Wilson. 1906,2K.B.292;R.L.A.'s opinion No 268 dated 15.1.1935). It is true that in the present case both Doctors Kollali and Bhat, councillors of the Sirsi Municipality, did anti-plague inoculation work for which they were paid Rs.17-8-o and Rs. 49-1-6 respectively by the Municipality but it is reported that the remuneration thus paid to them was barely sufficient to cover the expenditure, namely, tincture, heating apparatu oil, cotton, the services of a compounder,

he has been elected or appointed becomes ... liable under

of a compounder, syringe and needle etc. and that the duty was undertaken by them out of a sense of service to humanity. Assuming that to them out of a sense of sergice to humanity. Assuming that to be true, these councillors cannot be said to have had any real pecuniary or material interest in the anti-plague inoculation work done by them and consequently their duty as councillors cannot be regarded as having come into conflict with their personal interest. These councillors have therefore incurred no disqualifications under clause(a)of section 15(2).

3. Clause(b)of section 15(2)of the Bombay District Municipal Act, provides that if any councillor during the term for which he has been elected or appointed acts as councillor in any matter specified in sub-clauses (i)and(ii) he shall be disabled etc. Dr. Kollali no doubt presided as chairman over the meeting of the manging committee at which his fees for the inoculation work done by him were sanctioned; but that is not a matter covered by sub-clauses(i) and (ii) of clause(b) of section 15(2). Consequently Dr. Kollali is not disabled from continuing to be a councillor under section 15(2)(b).

Sd-/P.N.M.
29-8

Remembrancer of Legal Affairs.

U.R. to G.D., No. 7067 dated the 31st August 1942.

M.R.D.
4-5-56
C.A.

Submitted.

The facts reported by the Collector of Poona are as follows:/-

The proposal made by the Surgeon General with the Government of Bombay to appoint Mr.S.G.Kale, ~~M.C.P.~~ L.C.P.S., as Medical Officer of the Sirur Dispensary on honorary basis as a temporary measure for the duration of the war in place of the Subordinate Medical Service Officer, was sanctioned by Government on the following conditions, namely:-

(1)that the Sirur Municipality should pay to Mr. Kale the honorarium of Rs. 50/-per mensem direct in place of the contribution of Rs.82-8-0 per mensem, which it has to pay towards the pay of the Subordiante Medical Officer;

(2)that the present grant-in aid of Rs.700/- per annum,which is paid to the Municipality in respect of the dispensary, should be reduced to Rs.600/- per annum which is the expenditure to the Municipality on account of remuneration to the Medical Officer. (Vide G.R.,G.D.,No.S 48 (1) dated 9.4.1942).

2. The Collector of Poona states that as Mr. S.G. Kale is an elected member of the Sirur Municipality, a question has been raised by the Municipality whether Mr. Kale has incurred disqualification of the nature referred to in section 44(a)read with section 15(1)(f) of the Bombay District Municipal Act, 1901. The District Govt. Pleader, Poona, who was consulted on the subject, held that "Mr. Kale would be employed under the Municipality on his appointment as medical officer at Sirur and hence he would incur disqualification of the nature referred to in sec.44(a)..... Proviso(v)to section 15(1)is a specific provision in favour of a lawyer, and it cannot be extended in its application to a Medical Officer accepting employment under a Municipality". The President, however, holds that Mr. Kale cannot be considered to have in incurred disqualification as his position is analogus to that of Hospital Assistants. The Commissioner, C.D. is of opinion that As Mr. Kale has been appointed as Medical Officer on an honomary basis, it cannot be said the he is a Subordinate Officer of the Municipality, but that by hisappointment, although it is on honorary basis, he has become interested in an employment under the Municipality and as such he is disqualified under section 15(1)(f) of the Bombay District Municipal Act,1901.

3. On the above facts the question for the R.L.A.'s consideration is whether Mr. S.G. Kale, the elected member of the Sirur Municipality, who has been appointed as Medical Officer of the Sirur

Sirur Municipal Dispensary on payment of an honorarium of Rs.50/-per month payable by the Municipality, has become disabled from continuing to be a councillor of the Municipality under sec. 15(2)(a) read with sec. 15(1)(f) of the Bombay District Municipal Act, 1901.

4. Under sec.15(2)(a) of the Bombay District Municipal Act,1901, if any councillor during the term for which he has been elected becomes disqualified. Under sub-section(1),he shall, subject to the provisions of sub-sec.(3), be disabled from continuing to be a Councillor and his office shall become vacant. The question is whether Mr. Kale has incurred disqualification under any of the clauses(a)to (f)of sub-section (1), Clauses(f) of sub-sec.(1) provides that no person may be a councillor who, save as hereinafter provided, has directly or indirectly, by himself or his partner, any share or interest in any work done by order of a Municipality or in any contract or employment with or under, or by, or on behalf of, a Municipality, may be a councillor. "Employment" means the act of hiring, imploying a request and a contract for compensation (Black's Law Dictionary P.658). It means the act of employing; the state of being employed, business, calling, commission, profession, service vocation, that which engages the head or hands(Law Lexicon of Mr. India by Iyer). The word "Employed" (as applied to persons, engaged or about to be engaged) means engaged or occupied in the performance of work or duties, hired to perform labour; a term which means not only the act of doing a thing, but also to be engaged to do it, to be under contract or orders to do it.(I bid P.387). The word "honorarium" means a recompense for service rendered; a voluntary fee to one exercising a liberal profession (P. 481 of Wharton's Law Lexicon). "Honorarium" is a voluntary donation in consideration of services which admit of no compensation in money; something given in gratitude for services rendered. (P.529 of Iyer(s Law Lexicon). Prima Facie, it imples a gratutious payment, but it also means a fee for services rendered. The content must be looked to to in arriving at the meaning of the word "honorarim" (A.L.R. (1937) Madras 379). It is no doubt true that the appointment of Mr. Kale as Medical Officer of the Sirur Dispensary has been made by the Surgeon General with the approval of Govt. It is, however, evident that the Sirur Municipality is directed to pay the honorarium of Rs. 50/- per mensem direct to Mr. Kale, in place of the contribution of Rs.32-8-0 per mensem which it was required to pay on account of remuneration to the Medical Officer (Vide para 1(1) of G.R.,G.D., No S. 48 (1) dated 9.1.1942).

Mr. Kale's appointment as Medical Officer of the Sirur Municipal dis Dispensary and the payment of honorarium of Rs. 50/- P.m. by the Municipality for the services rendered to it direct from the municipa fund, lead to the conclusion that Mr. Kale has interest in the employ ment under the Sirur Municipality within the meaning of clause(f) of sub-sec.(1) of sec.15 of the Act and so long as he is so employed he is disqualified from continuing to be a councillor of the Municipalit (Vide para 3 of R.L.A.'s [illegible] L.S.Local Boards 25-29,dated 23.11. 1929). The disqualifying interest contemplated by sec. 15(1)(f) is such as leads or is likely to lead to a conflict between a person's private or personal interest and his duty as a councillor of the Municipality.

H.R.D.
4-5-36
C.4

Office of the R.L.A.

"No doubt 'honorarium' prima facie implies gratuitous payment, but it also means a fee for services rendered" (A.I.R. Madras 379 at P. 383) Mr. Kale is clearly interested in his employment by the Sirur Municipality as he will be getting also an honorarium of Rs.50 per month. Consequently he is disabled from continuing to be a councillor of the Sirur Municipality under sub-section(2)read with clause(f) of sub-section (1) of section 15 of the Bombay District Municipal Act, 1901. The case of a Hospital Assistant referred to by Cunning at P.43 of his bombay District Municipal Manual has no analogy with the present case. The view taken by the Commissioner in his endorsement at P.3 ante is correct.

Sd/- P.N.M.
13-9

Remembrancer of Legal Affairs.

M.R.D.
4-3-56
C.4

U.R. to C.D., No.7539, dated the 18th September 1942.

Office of the R.L.A.

It appears that one Mr.K.G. Shah at present detained in the Ahmedabad Central Jail was elected President at a meeting of the Dholka Municipality held under section 23(3) of the Bombay District Municipal Act, 1901. The questions raised for the consideration of the R.L.A. are:-

(1) Whether the election of Mr. Shah as President of the Dholka Municipality is ultra vires of the provisions of sub section(11) of section 23 of the Bombay District Municipal Act, 1901, if so,

(2) Whether the Municipality's resolution about the election of Mr. Shah as President can be suspended by the Collector under section 174 (1) of the Act; if not

(3) Whether the President and Vice-president of the outgoing Municipality can continue to carry on the duties of their offices until the new president takes over charge of his duties.

2. Sub-section(11) of section 23 of the Bombay District Municipal Act 1901, inter alias provides:

"As soon as a chairman is elected he shall take the Chair, and the meeting shall then proceed to elect the new president. The president shall take the chair as soon as he is elected and the meeting shall then proceed to elect the new vice-president."

The effect of this provision is only that the presence of the newly elected President in the chair is an integral part of the machinery provided for the election of the Vice-President, so that unless the President is present and takes the chair, the meeting cannot proceed to elect the Vice-President. But it has not the effect of requiring that the Municipality shall only elect the President from out of the councillors present at the meeting. The absence of the councillor elected president at the meeting is not a circumstance which would affect the validity of his own election. Consequently it cannot be said that Mr Shah's election is invalid by reason of his inability to preside at election of the Vice-President.

3. The second question does not survive. It may however be point out that the election of a President is a statutory duty and an act complete in itself. If is not an order or resolution of a municipa the execution of which is unlawful under section 174(1) of the Bomb District Municipal Act(See R.L.A.'s opinion No. 7224, dated 16th-19

Consequently it would not be competent to the Collector to suspend under section 174(1) the resolution of the Dholka Minicipality electing Mr. Shah as President.

4. Adverting to the third question for consideration, sec-tion 23(7A) provides that on the expiry of the term of office of a Municipality the President and Vice-President shall continue to carry on the current administrativ duties of their offices until such time as a new President and Vice-President have been appointed or elected and shall have taken over charge of their duties. The President and Vice-president of the outgoing Municipality in this case must therefore carry on the current administrative duties of their office until the adjourned meeting called under section 23(8) meets under the presidency of Mr. Shah and elects a new Vice-President, and both Mr. Shah and the new Vice-President take crarge of their duties

Sd/- P.N.M.
2-11

Remembrancer of Legal Affairs.

U.R.to G.D., No.8898,dated the 2nd November 1942.

M.R.D.
4-5-56
C.4

Submitted.

It appears that Capt. Haseler left Juhu in December 1939 and his vehicle was not kept in within the limits of the Juhu Municipality during any part of the quarter January to March 1940. It further appears that Capt. Haseler did not give notice to the Municipality as required by rule 9 of the Wheel Tax Rules to the effect that he did not intend to keep the vehicle for use in the next quarter. As no notice was given under rule the Municipality appears to have made a demand for the payment of the wheel tax Messrs. Crawford Bayley and Coy. for the reasons stated in their letter No. B/13164 dated 4.10.40 contended that rule 9 of the Wheelt Tax Rules was ultra vires. In this connection attention is also invited to the opinion of the legal adviser, Parle-Andheri Municipality, dated 4.2.42. This opinion suggests that rule 9 was intra vires.

2. On the above facts, the question for the R.L.A.'s consideration is whether rule 9 of the Wheel Tax Rules is intra vires section 59(ii)of of the Bombay District Municipal Act, 1901.

3. Under section 59(1) of the Bombay District Municipal Act, 1901, a municipality may impose a tax on all vehicles etc. Kept for use within the said district. Rule 1 of the wheel Tax Rules provides that a tax shall be levied on all vehicles etc. Kept for use within the Juhu Municipal limits. as described in Sch.I. Under rule 3, the tax shall be levied for each quarter of 3 months as follow i.e. April-June, July, September., October,December and January-March, and shall be paid in advance on the 1st day of each such quarter namely, 1st April, 1st July, 1st October and 1st January in each year. Rule 8 provides for the refund of the quarterly tax paid in advance on the dates specified in rule 3 or within 3 days thereafter under the circumstances mentioned therein. Rule 9 provides as follows/ "Any person whose name is entered in the assessment list for any quarter shall be liable tobe assessed for the next quarter unless he shall have given notice on or before the first day of the quarter for which he shall have paid the tax to the effect that his vehicle etc. is not to be kept for use during the next quarter."

4. Under rule 3 the wheel tax is leviable not ny the year but by quarter of three months and that it shall be paid first day of each quarter. From rules, land 3 read together, it appears to follow that

it appears to follow that the wheel tax shall be levied ... kept for use within the municipal limits on the first day of a... quarter. If the vehicle is not kept for use on the first day of any quarter but is kept for use within the district subsequently during that quarter, it shall be liable to the full amount of wheel tax for that quarter (vide rule 2). The cumulative effect of rules 1,2,3, and 8 appears to be that the wheel tax could be levied on the vehicles which are kept for use within the municipal limits either on the first day of any quarter or during that particular quarter. Under rule 9, however, a person whose name is entered in the assessment list for any quarter is liable to be assessed for the next quarter unless he has given notice before the first day of the next quarter that he did not intend to keep the vehicle for use during the next quarter. Under this rule, therefore, the owner of a vehicle of a vehicle who is assessed for the next or the following quarter if no notice is given that the vehicle is not intended to be kept in the district during the next quarter. The logical conclusion is that even if the vehicle is not kept within the municipal district for the next quarter, it would be liable to assessed for the tax on the ground that it was assessed during the previous quarter and that no notice was given that it would not be kept in the following quarter. This rule is not in consonance with the provisions of section 59 (ii) of the Act. The words "kept for use" in the Wheel Tax Rules bear the same meaning as that attached to the words in section 59(ii) of the Act. As pointed out in R.L.A.'s opinion Nos. 2044 dated 24.6.27 and 4168, dated 26.7.34, the criterion for the levy of the wheel tax is the use of the vehicle within the municipal district. The wheel tax can be levied only if the vehicles are kept mainly or principally for use in the municipal area (see R.L.A.'s No 2761, dated 24.5.37). The words "kept for use" have been interpreted to mean "maintained with the main object of being used" (see Bandra Municipality vs. The Burmah Shell Coy. 40Bom.L.R.Pp.111). In the subsequent case, Chunilal V.Ahm'd Borough (41B.L.R. 1249) the C.J. held that the words "kept for use" mean "kept for normal use within the borough". Merely because an owner of a vehicle has not given notice that the vehicle is not intended to be kept for use within the municipal district during the next quarter, it does not follow that the car has been kept for use in the municipal district. It is a question of fact for the municipality to verify before ordinally levying the tax whether the particular vehicle was or was not

was or was not kept for use within the municipal dis...
during the next quarter. If as a matter of fact the vehicle is n...
kept for use in the municipal district during any quarter, it would not be liable to be assessed for the wheel tax. Rule 9 goes much beyond the scope of section 59 (2) and appears to be ultra vires.

Id/-
29/30

S.A.S.

The question for consideration is whether Rule 9 of the Wheel tax Rules made by the Juhu Municipality is intra vires. The tax itself is leviable under section 59(b)(iii) of the Bombay District Municipal Act 1901, which provides that subject to any genral or special orders which which the Provincial Government maymake in this behalf, Any Municipality may under certain conditions impose a tax on all or any vehicles, boats or animals used for riding,draught or burden, kept for use within the municipal district. The liability of a person to pay the tax must be adjudged by reference to the terms of the section which moreover must be construed strictly in favour of the subject(see Bandra Municipality V. Burmah Sheel Storage and Distributing Co., Ltd., 40B.L.R. 111 atP.114). Therefore the liability would not arise unless the vehicle, boat or animal is in fact kept for use in the district during the period in repect of which the tax is levied; and kept for use means kept for normal use in the district.

M.R.D.
4-5-36.
C.A

Office of the R.L.A.

The question for consideration is whether rule 9 of the Wheel Tax Rules made by the Juhu Municipality is intra vires. The tax itself is l leviable under section 59(b)(ii) of the Bombay District Municipal Act, 1901, which provides that subject to any general or special orders which the Provincial Government may make in this behalf, any Municipality may under certain conditions impose a tax on all or any vehicles, boatboats or animals used used for riding, draught or burden, kept for use within the municipal district.' The liability of a person to pay the tax must be adjuged by reference to the terms of the section which moreover must be construed strictly in favour of the subject(see Bandra Municipality v. Burmah Shell Storage and Distributing Company, Limited, 40 B.L.R. 111 at page 114). Therefore the liability would not arise unless the vehicle, boat or animal is in fact kept for use in the district during the period in respect of which the tax is levied; and kept for use means kept for normal use in the district. (See Chunilal v. Ahmedabad Municipality, 31 Bom.L.R., 1929). The rules which the Municipality is empowered to make under section 46(i)and section 59(a)of the Act must be consistent with theAct and cannot enlarge the incidence of the Tax. Now rule 1 of the Wheel Tax Rules provides for the levy of a tax at specified rates on all vehicles, boats, animals used for riding, draught and or burden and kept for use within the Juhu Municipal limits. Under rule 3 the tax is leviable every quarter, and under rule 2 vehicles etc. not kept for use in the district on the 1st day of any quarter but kept for use within the district subsequently during the quarter for the space of 20 days or more are liable to the full amount of the tax for the quarter. Rule 9 then provides that any person whose name is entered in the assessment list for any quarter shall be liable to be assessed assessed for the next quarter unless he shall have given notice on or before the last day of the quarter for which he shall have paid the tax to the effect that his vehicle, animal or boat is not intended to be kept for use during the next quarter. The rule, it may be observed, does not deal with the liablity to be taxed but only with the liability to be assessed. Assess only means fix the amount of tax, and in this context, it connotes to call upon to pay. Therefore the rule only says that in the absence of a notice as stated, a person already on the assessment list is liable to be called upon to pay the tax. In other words~~, the rule only~~ ~~relates to called upon to pay the tax.~~ In other words, the rule only

the rule only relates to the machinery for the levy of the tax. When ~~a person receives such the machinery for the levy of the tax. When a person receives such the machinery for the levy of the tax.~~ When a person receives such a notice he can show that he is not liable to the tax under section 59(b)(ii). The rule would therefore appear to be intra vires. If the intention of the rule were that a person was liable to pay the tax even if he had not kept his car for use within the Municipal limits, then the rule would be ultra vires. But as suggested by the Examiner, Local Fund Accounts, that does not appear to be the intention.

Sd/-P.N.M.
17-11

Remembrance of Legal Affairs.

U.R. to G.D.,No. 9277,dated the 13th November 1941.

M.R.D.
4-5-56

Submitted.

It appears that in 1921, the Ahmedabad Municipality framed draft by-laws under sec. 48 (1)(u) of the Bombay District Municipal Act, 1901, for regulating admission to, and use, of municipal gardens and for securing orderly behaviour therein and submitted them for the sanction of Govt. After obtaining the opinion of the R.L.A.'s No.857 dated 19/5/21) Govt. informed the Commr., N.D. that the draft by-laws being ultra vires of the Bombay District Municipal Act, 1901, could not be sanctioned(vide G.O., G.D.No. 7795, dated 28.6.1921). A similar question appears to have now arisen, and the Commr. N.D., placing reliance upn R.L.A.'s opinion No.13104, dated 18.12.39, holds that it would be competent for the Municipality to make by-laws under Sec. 48(1)(u) for the maintenance, upkeep and control of Municipal gardens.

2. The question for the consideration of the R.L.A.'s whether a Municipality can make by-laws for the use, management, upkeep and control of Municipal public gardens under clause(u) of sub-section(1) of section 48 of the Bombay District Municipal Act, 1901.

3. Under clause(h) of section 56 of the Bombay District Municipal Act, 1901, a Municipality may at its discretion, provide out of the Municipal fund, for constructing, establishing or maintainig public gardens, parks, museums, libraries etc. Under sub-section(1) of section 48 a Municipality may, from time to time, with the previous sanction, in the case of City Municipalities of the Provincial Govt. or in other cases of the Commissioner, make a alter or rescind by-laws, but not so as to render them inconsistent with the Act, in respect of the several matters specified in clauses(a) to(u). Under clause(u), a Municipality may make by-laws generally for the the regulation of all matter relating to Municipal administration. The words under lined would warrant the making of the by-laws provided they are calculated to improve the management of the Municipal affairs (see R.L.A.'s No.Municipalities II-13/29, dated 23.12.29). The regulation of the use of public places vesting in a Municiaplity in the public interest is a matter relating to "Municipal administration" (Vide R.L.A.'s opinion No.7203, dated 13.12.1935). Regulation of the use of public gar- gardens vesting in the Municipality would be a matter relating to Municipal administration, and it would, therefore be competent for the Municiplity to make by-laws under sec. 48(1)

sec.48(1)(u) regulating the use of the public municipal gardens (vide R.L.A.'s opinion No.3446 dated 8.4.1940). The view expressed by the Commr., N.D., appears to be correct.

Sd/-
2/12

Remembrancer of Legal Affairs.

M.R:D.
4-5-56

Office of the R.L.A.

The question for the consideration of the R.L.A. is whether a municipality can make by-laws regulating the use and management etc. of municipal public gardens under clause(u) of section 48(1) of the Bombay District Municipal Act, 1901.

2. Clause(u)of section 48(1) of the Bombay District Municipal Act, 1901 empowers a municipality to make by-laws generally for the regulation of all matters relating to municipal administration. To regulate the use and management of municipal public gardens would be a matter relating to the Mjnicipal adminstration (of R.L.A.'s opinion No.8203,dated 13.12.1935 followed in R.L.A.'s opinions No 3446 dated 8.4.40 cf. also R.L.A.'s opinions No 23104 dated 18-12-39 and No. 8232,dated 19-9-40.). Consequently by-law can be framed under clause(u)of section 48(1)for regulating the and management of municipal public gardens. It is true that a contrary view was expressed by the R.L.A. in his opinion No.1064 dated 7.5.1920 and No.857,dated 19.5.1921; but the authority of that view has been considerably shaken by the subsequentopinions of the R.L.A.. referred to above and it can no longer be regar as binding. The view taken by the Commissioner in his letter at P.1 ante is correct.

Sd/-P.N.M.
18-12

Remembrancer of Legal Affairs.

U.R. to the G.D., No.10129 dated the 21st December 1942.

M.R.D.
4-5-56
C.4

SM
15/5